

HUMAN SERVICES BOARD

INTRODUCTION

DISCUSSION

The essential facts are not in dispute. The petitioner was formerly a recipient of Reach Up for herself and her minor child through the Department for Children and Families. As a condition of receiving this assistance the petitioner assigned to the Department all her rights to child support from the father of her child, who is the obligor regarding the support of that child.

In an order dated September 5, 2006 the family court found the obligor liable for arrearages of child support of \$3,966.73 to the petitioner and \$2,900.80 to OCS. The petitioner continued to receive Reach Up for some months following that order. Following an Administrative Review hearing held by OCS in February 2008, it appears that the petitioner does not dispute that as of May 31, 2007 the obligor owed OCS a total of \$3,277.54 in unreimbursed Reach Up benefits that had been paid by the Department to the petitioner. There also does not appear to be any dispute that the obligor's arrearage to the petitioner herself (\$3,966.73), as ordered by the family court, had not been significantly reduced.

It does not appear that the petitioner was receiving Reach Up in April and May 2007. In April 2007 OCS "intercepted" a tax refund filed by the obligor in the amount of \$1,031. The dispute in this matter is whether OCS should have kept this amount to apply toward the obligor's unreimbursed "debt" for the Reach Up that had been paid to the petitioner, or whether OCS should have paid all or part of this money to the petitioner, who was not receiving Reach Up at that time.

In its Administrative Review decision in this matter OCS acknowledges that provisions in federal and state policy generally provide that child support collected by OCS when the custodial parent is receiving Reach Up are applied first to reimburse the state for Reach Up assistance that it is paying to support the obligor's children. The same policy applies to amounts over and above current child support that are collected as arrearages. Any amounts collected either as ongoing support or as arrearages that exceed the amount of Reach Up being or having been paid are paid to the custodial parent. OCS further acknowledges that whenever a custodial parent is not receiving Reach Up (i.e., when the assignment of support is not in effect) OCS turns over all support collected, ongoing support and arrearages, directly to the custodial parent.

OCS maintains, however, that a specific exception applies to federal income tax refunds of an obligor that are intercepted as "offsets" to an existing child support arrearage. Federal statutes appear to support OCS's position. 42 U.S.C. § 657(a)(2)(B)(iv) provides in pertinent part:

Notwithstanding any other provision of this section, any amounts collected pursuant to section 664 of this title (which pertains to federal income tax

refund offsets) shall be retained by the state to the extent past-due support has been assigned to the state as a condition of receiving assistance from the state, up to the amount necessary to reimburse the state for amounts paid to the family as assistance by the state.

Citations provided by OCS in its decision are clear that *federal* policy interprets the above provision as requiring that tax offsets "in former assistance cases must first be applied to assigned arrearages", and that "(t)hese collections must be retained by the state up to the cumulative amount of the unreimbursed assistance paid to the family." Action Transmittal OCSE-AT-97-17.

The above provisions are reflected in the latest child support agreement the petitioner entered into with the Department for Children and Families on August 9, 2006. That agreement includes the following:

I understand federal law requires I assign to the State of Vermont:

- all current support owed to me while I receive public assistance, no matter when the Office of Child support (OCS) collects it.
- my rights to any and all arrears owed to me at the time of this assignment including, but not limited to, unpaid support obligations, debts, and court-ordered and administrative judgments. I temporarily assign these arrears while I receive public assistance.
- my rights to any and all arrears including, but not limited to, unpaid support obligations, debts, and court-ordered and administrative judgments if collected through federal tax offset.

The Human Services Board is bound by law to affirm agency decisions that are in accord with applicable law. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17. In light of the above provisions, the only effective avenue of appeal available to the petitioner would appear to be an attempt to prevail upon the Vermont family court, as a matter of equity, to order OCS to turn the tax refund intercept in question over to her.

ORDER

The Administrative Review decision by OCS is affirmed, without prejudice for the petitioner to seek relief in family court.

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